IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1706 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALPEASH VITHALBHAI KACHA - Appellant(s)
Versus
BHARATSINH BALWANTSINH & 2 - Defendant(s)

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Appearance :

MR HM LATHIA with MR PARAS H LATHIA for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1, - Deleted.
None for Defendant(s) : 2,
MR RAJNI H MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 18/12/2006

ORAL JUDGMENT

Original claimant has approached this Court under section 173 of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act'] for claiming

enhancement in the compensation awarded by the Motor Accident Claims Tribunal [Special], District Rajkot at Rajkot by judgment and award dated 31st December, 1992 rendered in Claim Case No. 226 of 1984. The Tribunal has granted a sum of Rs.28,680/- by way of compensation together with interest at the rate of 12% p a and proportionate costs. This has been awarded against the original claim of Rs.75,000/-.

2. The accident in question occurred on 22nd February, 1984. The offending vehicle is truck bearing Registration No. GTX 4246 which was proceeding from Rajkot to Chotila. It knocked down the victim, namely Alpesh, a boy then aged about 8 years at village Maliyasan. The boy was also proceeding in the same direction and the offending vehicle dashed against him from behind, as a result of which, boy received several injuries including fracture of supra condyl of right humerous. There was bleeding from both nostrils. He was immediately removed to the hospital, namely Civil Hospital at Rajkot and he was admitted as an indoor patient. He was discharged against medical advice on 27th January, 1984. It is the say of the appellant that even after his discharge from the hospital, the treatment lasted for considerably long period and he had to go to the Physiotherapist regularly for treatment. In view of these accidental injuries suffered by the appellant, the aforesaid claim petition was filed.

2.1. At the hearing, the appellant produced oral as well as documentary evidence to substantiate the averments made in the petition. The Tribunal, on the basis of the material produced before it, arrived at a conclusion that the accident occurred solely due to the negligence of the driver of the offending vehicle i.e., respondent no. 1, who has now been deleted from the present proceedings. The Tribunal also held that the vehicle was owned by respondent no. 2 and it was duly insured with respondent no. 3 and the insurance was in existence on the date of accident. The Tribunal also found that the appellant deserved compensation at the rate of Rs.10,000/- for pain, shock and suffering, Rs.3,000/- for medicine and special diet, Rs.2,000/- towards the attendant charges and transportation and Rs.13,680/- for loss of earning capacity. In-all Rs.26,680/- has been awarded.

2.2. Being dissatisfied with the quantum of compensation, the appellant has now approached this Court. I have heard Mr. HM Lathia, learned advocate for the appellant and Mr. Sunil B Parikh, learned advocate appearing for Mr. RH Mehta for the respondent no. 3. Mr. Lathia has taken me through the record and proceedings of the case and in particular oral evidence of the appellant and the doctor, who issued the disability certificate. He has also referred to the relevant portions from the judgment of the Tribunal to point out what errors, according to him, the Tribunal has committed. He has submitted that the compensation awarded by the Tribunal is grossly inadequate and it is

required to be enhanced substantially. According to him, Rs.10,000/- awarded for pain, shock and suffering is very much on the lower side and the appellant deserved to have Rs.50,000/- under that head. He has further submitted that under the head of special diet and medicine, the Tribunal ought to have awarded around Rs.8,000/- to Rs.10,000/- and so is the submission with regard to the attendant and transportation charges. In his submission, the compensation awarded towards loss of future income is based on underestimated income of the appellant. According to him, when there is no evidence with regard to any income of the minor, as per the provisions of the Act, it has to be taken as Rs.15,000/- per annum and the compensation should be awarded on the said basis under the head of future loss of income. In support of his submissions, he has also placed reliance on the various decisions of the Apex Court as well as this Court and other High Courts.

2.3. As against that, Mr. Sunil Parikh, learned advocate for the respondent no. 3 has fully supported the judgment of the Tribunal and has submitted that considering the nature of injuries suffered by the appellant, the amount of compensation awarded by the Tribunal is just and proper and no interference of this Court is required. He has placed reliance on the decision rendered by the Division Bench of this Court, which is in the case of Popatlal Parshottamdas Shah v. Gujarat State Road Transport Corpn., reported in 23 (1) GLR p. 765 and another decision in the case of Somabhai Vajabhai v. Babubhai

Bhailalbhai reported in the same volume at page 785. He has also submitted that so far the income of a minor is concerned, the provision of the Act relied on by Mr. Lathia has been brought on the statute book by an amendment made in 1994, which has no retrospective effect and therefore, there is no reason to consider the income of the appellant at Rs.15,000/- per annum. He has, therefore, prayed that the appeal be dismissed.

2.4. Respondent no. 1 – driver is unserved. Mr. Lathia, learned advocate for the appellant has requested to delete respondent no. 1 from the proceedings. Hence respondent no. 1 stands deleted from the present proceedings. Mr. Lathia has also stated that the claimant/appellant has now become major and Civil Application filed for such amendment has been granted by this Court and accordingly the amendment in the cause title of the appeal showing the claimant/appellant as adult has been carried out.

3. I have perused other judgments cited by Mr. Lathia as well as by Mr. Parikh. But considering the facts of this case, I do not think it relevant to discuss them here as the aforesaid decision of the Division Bench is sufficient for me to decide this appeal.

4. Having heard the learned advocates for the parties and having perused the record closely, it appears that so far the factum of accident is

concerned, there is no dispute. The evidence on record fully establishes that the appellant received several injuries on account of accident caused due to negligent driving of respondent no. 1. The offending vehicle bumped against a boy from behind and knocked him down on the road. As a result of the same, he received as many as 8 injuries including the fracture stated above. The Tribunal, after appreciating the evidence on record, has reached the conclusion that on the date of accident, respondent no. 1 drove the vehicle in rash and negligent manner causing the present accident. This finding of the Tribunal has not been challenged by the otherside either by filing cross appeal or cross objections. In view of the same, this finding is deemed to have been accepted by the respondents. Hence, there is no need for this Court to discuss the said issue in detail. I have also perused the discussions of the Tribunal in its judgment on the aspect of negligence of the driver and I have found that no error has been committed by the Tribunal on that count and that finding is required to be accepted.

5. The only question that remains to be examined in this case is – whether the quantum of compensation awarded by the Tribunal can be said to be just compensation or it is hopelessly inadequate as submitted by the appellant. For that reason, first of all it will be necessary to see what injuries have been suffered by the appellant due to the accident. Appellant was admitted in the Civil Hospital at Rajkot and he remained there as indoor patient from

January 22, 1984 to January 27, 1984. He was discharged against the medical advice. On examination, the following injuries were found by the Medical Officer :-

I. Swelling over Rt elbow

II. Abrasion 1" in diameter left temp. r.

III. Bleeding from both nostrils

IV. Abrasion 2 1/2" in diameter Rt Chick

V. Multiple Small abrasions dorsal aspect of Lt hand

VI. Abrasion 1 1/2" in diameter on chin

VII 3 Small abrasions Rt foot.

VIII. Tenderness on mid chest left side.

Certificate to that effect has been issued and it has been brought on record at Exh. 30. On 16th June, 1992 the appellant had been examined by Dr. DP Dholakia, Ortho. Surgeon of Dr. Dholakia Orthopaedic Hospital and Accident Clinic, Rajkot. He examined him for assessing the permanent disability. He has also issued certificate, which is at Exh. 34. He has noted the following features:-

I. Tenderness over Rt. Elbow

II. Tenderness lower humerous (Rt) with bony thicking

III. Cubitus varus deformity 5" (Rt) elbow while -(L elbow 15" cabitus

valgus

IV. Terminal flexion of Rt elbow limited

V. No hyper extension possible on Rt side 10" comparable with Lt side.

VI. Rotation of Rt forearm limited by 25%

VII. Scar on outerside of Lt. eye.

VIII. Tenderness over Rt tempo-parietal region.

He has assessed the disability at 19% considering the body as a whole. He himself has given evidence which is at Exh. 33. He has, in examination-in-chief, stated that appellant was examined by him on 16th June, 1992 and upon his examination, certain defects were found which have been already noted above. He has been cross-examined by the learned advocate for the Insurance Company extensively. His evidence reveals that there is deformity of the hand. The hand has been bent inwardly and gives appearance of shortening of the hand. He has also found that there was pain at fractured limb. His evidence also shows that there was no possibility of decrease in the percentage of disability, but on the contrary, with the passage of time, it would increase. From the evidence of this witness, it clearly appears that there is notable deformity of the right hand and considerable restriction on its movement. The same is likely to increase in future. In view of the same, the amount awarded under the head of pain, shock and suffering is slightly lower side. The Tribunal has overlooked two material facts, namely that even after period of 9 years, the pain has

subsisted. It has also not considered the fact that due to deformity of the hand, the appearance of appellant has become slightly abnormal which would affect his marital prospects also. In view of the same, in my opinion, under the head of pain, shock and suffering, the compensation amount ought to have been Rs.15,000/-. Further so far the award under the head of special diet and medical expenses is concerned, only Rs.3,000/- has been awarded by the Tribunal. The Tribunal has failed to consider that the appellant had to take extensive treatment initially from the hospital and thereafter from the Physiotherapist, which would have cost him substantial amount. It is on record that he is a resident of village Maliyasan and there is no facility of medical treatment. Hence, he had to go to Rajkot for receiving course of the treatment from Physiotherapist. Therefore, apart from the medical expenses as also the expenses for the special diet, he was required to spend substantial amount for transportation also. As stated above, under these two heads the Tribunal has in-all awarded Rs.5,000/-. This amount is required to be doubled. Under both these heads in-all Rs.5,000/- is additionally required to be awarded.

5.1. So far the future loss of income is concerned, the Tribunal has awarded Rs.13,680/- taking the base of monthly income of Rs.300/-. According to the Tribunal, considering the disability at 19%, the monthly loss would be Rs.57/- and the annual loss would work out to Rs.684/-. Mr. Lathia has placed reliance on the decision of this Court rendered in the case of Amul

Rameshchandra Gandhi v. Abbasbhai Kasambhai Diwan reported in 1978 GLR at p. 721. In that case in similar circumstances, the Tribunal had assessed the monthly income of a boy aged 12 years at Rs.300/-. The loss of earning capacity was assessed at 25%. Hence, according to the Tribunal, he deserved compensation at the rate of Rs.75/- per month under the head of loss of earning capacity. The Division Bench held that it was grossly underestimated figure. In the opinion of the Court, it ought to have been estimated at Rs.1,000/- per month and the pecuniary loss at Rs.250/- per month i.e., at Rs.3,000/- per annum. This Court applied multiplier of 15 and assessed the total future pecuniary loss at Rs.45,000/-. In the present case, circumstances are quite similar to the circumstances appearing in the case of Amul Rameshchandra [supra]. Hence instead of determining the monthly income of the appellant at Rs.300/-, it ought to have been assessed at Rs.1250/- per month since the date of accident in the case of Amul Rameshchandra [supra] was July 10, 1975, where Rs.1,000/- has been fixed. However, considering the fact that the multiplier applied by the Tribunal here in this case is 20, as against that of 15 applied by the Division Bench, it will be desirable to fix the income of the appellant at Rs.1,000/- per month. The disability is assessed at 19% and monthly pecuniary loss comes to Rs.190/- i.e., yearly at Rs.2,280/- and applying multiplier of 20 the total pecuniary loss would work out to Rs.45,600/-. The Tribunal has already awarded a sum of Rs.13,680/-, hence the additional amount of Rs.31,920/- is required to be awarded to the appellant

under this head. Thus, in-all the appellant deserves additional total compensation of Rs.41,920/-, round figure being Rs.42,000/-. Thus, the appellant will be entitled to receive Rs.42,000/- as total additional compensation together with interest at the rate of 12% p a from the date of the petition till realization and proportionate costs.

This appeal is partly allowed to the aforesaid extent.

Registry is directed to retransmit the R & P to the concerned Tribunal forthwith.

[Akshay H Mehta, J.]

* Pansala.